

(c) The Responsible Official may request that an applicant submit sufficient information to enable the Responsible Official to determine whether a categorical exclusion applies to the applicant's proposed action or whether an exceptional circumstance applies. Pursuant to Subpart C of this part, applicants are not required to prepare EIDs for actions that are being considered for categorical exclusion.

(d) The Responsible Official must prepare an EA or EIS when a proposed action involves extraordinary circumstances.

(e) After a determination has been made that a categorical exclusion applies to an action, if new information or changes in the proposed action involve or relate to at least one of the extraordinary circumstances or otherwise indicate that the action may not meet the criteria for categorical exclusion and the Responsible Official determines that an action no longer qualifies for a categorical exclusion, the Responsible Official will prepare an EA or EIS.

(f) The Responsible Official, or other interested parties, may request the addition, amendment, or deletion of a categorical exclusion.

(1) Such requests must be made in writing, be directed to the NEPA Official, and contain adequate information to support and justify the request.

(2) Proposed new categories of actions for exclusion must meet these criteria:

(i) Actions covered by the proposed categorical exclusion generally do not individually or cumulatively have a significant effect on the human environment and have been found by EPA to have no such effect.

(ii) Actions covered by the proposed categorical exclusion generally do not involve extraordinary circumstances as set out in paragraphs (b)(1) through (b)(10) of this section and generally do not require preparation of an EIS; and

(iii) Information adequate to determine that a proposed action is properly covered by the proposed category will generally be available.

(3) The NEPA Official must determine that the addition, amendment, or deletion of a categorical exclusion is appropriate.

(g) Any addition, amendment, or deletion of a categorical exclusion will be done by rule-making and in coordination with CEQ pursuant to 40 CFR 1507.3 to amend paragraph (a)(1) or paragraph (a)(2) of this section.

[72 FR 53662, Sept. 19, 2007, as amended at 74 FR 5993, Feb. 4, 2009]

§ 6.205 Environmental assessments.

(a) The Responsible Official must prepare an environmental assessment (EA) (see 40 CFR 1508.9) for a proposed action that is expected to result in environmental impacts and the significance of the impacts is not known. An EA is not required if the proposed action is categorically excluded, or if the Responsible Official has decided to prepare an EIS. (See 40 CFR 1501.3.)

(b) Types of actions that normally require the preparation of an EA include:

(1) The award of wastewater treatment construction grants under Title II of the Clean Water Act;

(2) EPA's issuance of new source NPDES permits under section 402 of the Clean Water Act;

(3) EPA actions involving renovations or new construction of facilities;

(4) Certain grants awarded for special projects authorized by Congress through the Agency's annual Appropriations Act; and

(5) Research and development projects, such as initial field demonstration of a new technology, field trials of a new product or new uses of an existing technology, alteration of a local habitat by physical or chemical means, or actions that may result in the release of radioactive, hazardous, or toxic substances, or biota.

(c) The Responsible Official, or other interested parties, may request changes to the list of actions that normally require the preparation of an EA (i.e., the addition, amendment, or deletion of a type of action).

(d) Consistent with 40 CFR 1508.9, an EA must provide sufficient information and analysis for determining whether to prepare an EIS or to issue a FONSI (see 40 CFR 1508.9(a)), and may include analyses needed for other environmental determinations. The EA must focus on resources that might be impacted and any environmental issues that are of public concern.

- (e) An EA must include:
 - (1) A brief discussion of:
 - (i) The need for the proposed action;
 - (ii) The alternatives, including the no action alternative (which must be assessed even when the proposed action is specifically required by legislation or a court order);
 - (iii) The affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;
 - (iv) The environmental impacts of the proposed action and alternatives, including any unresolved conflicts concerning alternative uses of available resources; and
 - (v) Other applicable environmental laws and executive orders.
 - (2) A listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders;
 - (3) Identification and description of any mitigation measures considered, including any mitigation measures that must be adopted to ensure the action will not have significant impacts; and
 - (4) Incorporation of documents by reference, if appropriate, including, when available, the EID for the action.

§ 6.206 Findings of no significant impact.

- (a) The Responsible Official may issue a finding of no significant impact (FONSI) (see 40 CFR 1508.13) only if the EA supports the finding that the proposed action will not have a significant effect on the human environment. If the EA does not support a FONSI, the Responsible Official must prepare an EIS and issue a ROD before taking action on the proposed action.
- (b) Consistent with 40 CFR 1508.13, a FONSI must include:
 - (1) The EA, or in lieu of the EA, a summary of the supporting EA that includes a brief description of the proposed action and alternatives considered in the EA, environmental factors considered, and project impacts; and
 - (2) A brief description of the reasons why there are no significant impacts.
- (c) In addition, the FONSI must include:

- (1) Any commitments to mitigation that are essential to render the impacts of the proposed action not significant;
- (2) The date of issuance; and
- (3) The signature of the Responsible Official.
- (d) The Responsible Official must ensure that an applicant that has committed to mitigation possesses the authority and ability to fulfill the commitments.
- (e) The Responsible Official must make a preliminary FONSI available to the public in accordance with section 6.203(b) of this part before taking action.
- (f) The Responsible Official may proceed with the action subject to any mitigation measures described in the FONSI after responding to any substantive comments received on the preliminary FONSI during the 30-day comment period, or 30 days after issuance of the FONSI if no substantive comments are received.
- (g) The Responsible Official must ensure that the mitigation measures necessary to the FONSI determination, at a minimum, are enforceable, and conduct appropriate monitoring of the mitigation measures.
- (h) The Responsible Official may revise a FONSI at any time provided the revision is supported by an EA. A revised FONSI is subject to all provisions of paragraph (d) of this section.

§ 6.207 Environmental impact statements.

- (a) The Responsible Official will prepare an environmental impact statement (EIS) (see 40 CFR 1508.11) for major federal actions significantly affecting the quality of the human environment, including actions for which the EA analysis demonstrates that significant impacts will occur that will not be reduced or eliminated by changes to or mitigation of the proposed action.
 - (1) EISs are normally prepared for the following actions:
 - (i) New regional wastewater treatment facilities or water supply systems for a community with a population greater than 100,000.